

STATEMENT OF CONGRESSMAN JOHN CONYERS, JR.

There can be no doubt that today we are in a constitutional crisis that threatens the system of checks and balances that has preserved our fundamental freedoms for more than 200 years. There is no better illustration of that crisis than the fact that the president is openly violating our nation's laws by authorizing the NSA to engage in warrantless surveillance of U.S. citizens.

The Bush Administration offers two arguments to justify their actions. First, they assert, that warrantless searches were authorized by the Afghanistan use of force resolution. Second, they say, the Constitution permits and even mandates such actions. To this member and indeed to most of our nation's legal community, neither argument is remotely plausible or credible, and nothing in their 42 page legal analysis establishes anything to the contrary.

As for the Administration's claim of statutory authority, a plain reading of the text of the resolution reveals that there is no reference whatsoever to domestic surveillance. Former Majority Leader Daschle told us that the resolution was narrowed from the Administration's initial request to avoid such construction, and the Attorney General went so far as to admit that they were told by Members of Congress that it would be "difficult if not impossible" to amend the law to authorize such a program. As Harvard Law Professor Larry Tribe wrote me, "to argue that one couldn't have gotten congressional authorization ... after arguing that ... one did get congressional authorization ... takes some nerve."

In terms of inherent constitutional authority, this too flies in the face of both common sense and legal precedent. If the Supreme Court didn't let President Truman use this authority to take over the steel mills during the Korean War in 1952, and wouldn't let President Bush use the authority to indefinitely hold enemy combatants in 2005, it is quite obvious the constitution doesn't allow warrantless wiretapping of U.S. citizens today. As Justice O'Connor wrote "a state of war is not a blank check."

Perhaps what is most troubling of all is that if we let this domestic spying program continue, if we let this president convince us that we are at war, so he can do what he wants, we will allow to stand the principle that the president alone can decide what laws apply to him. I submit that is not only inconsistent with the principles upon which our Republic was founded, it denigrates the very freedom we have been fighting for since the tragic events of September 11. That is why we are holding today's hearing.